

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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TYREK DUBOSE,

Plaintiff,

v.

9:21-cv-01091 (AMN/CFH)

ROSEMARIE WENDLAND, JANE DOE,  
JOHN DOE 1, and JOHN DOE 2,

Defendants.

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**APPEARANCES:**

**OF COUNSEL:**

**TYREK DUBOSE**  
Brooklyn, NY 11233  
Plaintiff, *Pro Se*

**LETITIA JAMES**  
Attorney General of the State of New York  
Litigation Bureau  
The Capitol  
Albany, NY 12224  
*Attorneys for Defendants*

**NICHOLAS W. DORANDO, ESQ.**

**Hon. Anne M. Nardacci, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

**I. INTRODUCTION**

Plaintiff *pro se* Tyrek Dubose (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 1983 alleging that Defendants Superintendent Rosemarie Wendland, Nurse Jane Doe 1, Officer John Doe 1, and Officer John Doe 2 violated his Eighth Amendment Constitutional rights. Dkt. No. 1 (the “Complaint”). Defendant Wendland moved to dismiss Plaintiff’s Complaint for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Dkt. No. 29 (the “Motion”). Plaintiff did not oppose the Motion. On August 3, 2023, United States Magistrate

Judge Christian F. Hummel issued a Report-Recommendation and Order recommending granting the Motion and dismissing the Complaint without prejudice. Dkt. No. 30 (the “Report-Recommendation”).

For the reasons set forth below, the Court adopts the Report-Recommendation in its entirety.

## II. LEGAL STANDARD

This Court reviews *de novo* those portions of a magistrate judge’s report-recommendations that have been properly preserved with a specific objection. 28 U.S.C. § 636(b)(1)(C); *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012). If no specific objections have been filed, this court reviews a magistrate judge’s report-recommendations for clear error. *See id.* at 229 (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition). “When performing such a clear error review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Dezarea W. v. Comm’r of Soc. Sec.*, No. 6:21-CV-01138 (MAD/TWD), 2023 WL 2552452, at \*1 (N.D.N.Y. Mar. 17, 2023) (quoting *Canady v. Comm’r of Soc. Sec.*, No. 1:17-CV-0367 (GTS/WBC), 2017 WL 5484663, at \*1 n.1 (N.D.N.Y. Nov. 14, 2017)). After appropriate review, “the court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

## III. DISCUSSION

As no party has filed objections to the Report-Recommendation, this Court reviews the Report-Recommendation for clear error.

Magistrate Judge Hummel recommended granting the Motion and dismissing Plaintiff’s Complaint. Dkt. No. 30 at 13. To reach this recommendation, Magistrate Judge Hummel

considered each of the five factors courts in the Second Circuit use to adjudicate motions pursuant to Rule 41(b), *see id.* at 5-6 (citing, *inter alia*, *U.S. ex. rel Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996)), and found that each factor weighed in favor of dismissal, *id.* at 6-12. Finally, in due deference to Plaintiff's *pro se* status, Magistrate Judge Hummel recommended dismissal of the Complaint without prejudice. *Id.* at 12.

Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

#### IV. CONCLUSION

Accordingly, the Court hereby

**ORDERS** that the Report-Recommendation, Dkt. No. 30, is **ADOPTED in its entirety**; and the Court further

**ORDERS** that Defendants' Motion to Dismiss, Dkt. No. 29, is **GRANTED**; and the Court further

**ORDERS** that Plaintiff's Complaint, Dkt. No. 1, is **DISMISSED without prejudice**; and the Court further

**ORDERS** that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: August 23, 2023  
Albany, New York

  
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Anne M. Nardacci  
U.S. District Judge